

For: State and County Offices

Permanent Injunction Permitting Certain Critical Feed Use (CFU)

Approved by: Acting Deputy Administrator, Farm Programs



1 Overview

A Background

On May 27, 2008, Notice CRP-598 was issued to provide that certain acreage enrolled in CRP would be available for hay and forage after the ending of the primary nesting season. Beginning June 2, 2008, CRP participants could request to voluntarily modify CRP contracts for critical feed use, such as haying and grazing.

On July 8, 2008, a Federal court granted a Temporary Restraining Order that:

- suspended authority to process or approve CRP-1M Addendum
- required that any critical feed use activity must immediately cease.

On July 24, 2008, the Federal court issued a Permanent Injunction which permitted certain critical feed use to continue regarding, in effect 3 categories of producers:

- Category A which includes producers who were approved before the July 8, 2008, Temporary Restraining Order
- Category B which includes producers who applied for CFU before the July 8, 2008, Temporary Restraining Order
- Category C which includes producers in special situations which will be addressed in a later notice.

B Purpose

This notice provides guidance about implementing critical feed use under the Permanent Injunction.

| Disposal Date | Distribution |
|-----------------|---|
| January 1, 2009 | State Offices; State Offices relay to County Offices and NRCS State Offices |

1 Overview (Continued)

C General Permanent Injunction Policy

CRP participants who were approved before the July 8, 2008, 5 p.m. pt, Temporary Restraining Order (Category A) for the CFU may immediately proceed with the approved activity provided the haying or grazing must end by November 10, 2008. No rental reduction will apply; however, the acres hayed or grazed will apply towards future managed haying or grazing frequencies.

CRP participants who applied (but were not approved before the July 8, 2008, 5 p.m. pt, Temporary Restraining Order) (Category B) may, if otherwise eligible, have their applications processed and approved by the County Office. However, for these cases, haying must end by September 30, 2008, and grazing must end by October 15, 2008. No rental reduction will apply; however, the acres hayed or grazed will apply towards future managed haying or grazing frequencies.

For all other cases, no CFU is allowed except to the extent that producers fall in Category C, which will be covered by forthcoming additional information that will describe which producers can be considered for approval under that special allowance. As with Category A and B, no person in Category C will be able to perform any CFU activity until their CFU modification is approved along with an approved modified conservation plan.

2 Action

A County Office Action

County Offices shall read and follow the provisions of this notice.

County Offices shall **not** permit any activity except for Category A and B producers who have been given notice of the new court order in accordance with this notice, have been approved for participation in the CFU with an approved modified conservation plan, and who meet all the conditions of the CFU as modified in this notice.

2 Action (Continued)

A County Office Action (Continued)

County Offices shall immediately notify Category A producers of the provisions of this notice. Such notice shall be done using Exhibit 1 and may be modified as appropriate. A dated copy of Exhibit 1 must be filed in the participant's CRP folder indicating how notice was given and the date of such notice.

Category A producers:

- **may** begin the activity on receipt of the notice of the modified conditions. The CRP participant must follow up such notification with a written acknowledgment of that agreement.
- acting before receipt of the notice will not of itself be considered a violation of the CRP contract, but is undertaken by a producer at the producer's own risk and will be subject in full to the new terms and conditions of this notice.

County Offices shall immediately notify Category B producers of the provisions of this notice. Such notice shall be done using Exhibit 2 and may be modified as appropriate. Exhibit 2 or a modified version, if appropriate, shall be included in the approval notice and the approval notice shall specify that the approval is subject to the modified CFU terms set out in Exhibit 2.

Category B producers:

- may **not** begin CFU until the contract modification, a modification of the conservation plan has been approved, and they have received Exhibit 2. The CRP participant must follow up such notification with a written acknowledgment of that agreement.
- approval package shall show that such notice of these new conditions was given and include all documentation related to that notice, including dates and the method in which notice was given.

B State Office Action

State Offices shall ensure that County Offices follow instructions in this notice.

Category A Conditions for Critical Feed Use

This exhibit applies to those CRP participants who were approved for critical feed use before the July 8, 2008, Temporary Restraining Order. Subject to the terms described in this exhibit, CFU activity for these participants may now be undertaken, pursuant to a further court order, and as before haying or grazing must end by November 10, 2008, and there will be no rental reduction.

However, any such activity will “restart the clock” for future managed haying or grazing, meaning that the activity will restart the cycle for managed haying and grazing and the next such managed haying and grazing cannot occur until the full cycle has been completed from the time of the CFU. For example, if the producer is allowed managed haying and grazing every three years, the next managed haying and grazing cannot occur until three years after the year of the CFU.

The CRP participants must be informed of the provisions included in this exhibit by one of the following methods:

- Telephone. If informed by phone, County Offices must indicate the name of the person informed and the date.
- Mail
- In-person.

The participants are to be informed of the conditions set out in this exhibit. They are to be notified as well that by undertaking any activity now as allowed by the new court order, the CRP participant acknowledges and agrees to the terms and conditions set out in this exhibit and must follow up with a written acknowledgement of that agreement. Otherwise, any such CFU activity will be considered a violation of the CRP contract. This means that the participant agrees, in particular to the modified provisions regarding “restarting the clock” on managed haying and grazing. Undertaking any activity by any person in Category A without first receiving this notice is at their own risk and subject to the terms of this notice.

Category B Conditions for Critical Feed Use

This exhibit applies to those CRP participants who applied for CFU, but were not approved before the July 8, 2008, Temporary Restraining Order. If these participants are now approved for critical feed use activity then in addition to other terms and conditions that applied under the original notice, the following terms and conditions apply:

- haying must end by September 30, 2008
- grazing must end by October 15, 2008
- acres hayed or grazed will “restart the clock” for future managed haying or grazing, meaning that the activity will restart the cycle for managed haying and grazing and the next such managed haying and grazing cannot occur until the full cycle has been completed from the time of the CFU. For example, if the producer is allowed managed haying and grazing every three years, the next managed haying and grazing cannot occur until three years after the year of the CFU.

As previously announced, there will be no rental reduction. The CRP participants must be informed of these new (as compared with the original announcement of the CFU) provisions when given notice of their approval for the CFU and shall provide a written acknowledgement that they agree to these modified terms. It is understood, however, that any CFU activity undertaken on the farm will, regardless of such written acknowledgement, be subject to these modified terms and such activity shall be considered agreement to those terms.

The County Office will maintain in the file documentation of these modified terms.

No activity is permitted on any CRP ground unless there has been approval of the contract modification, subject to the modified terms in this exhibit, and approval of the modified conservation plan.